

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT HALL,

Defendant-Appellant.

UNPUBLISHED

March 27, 2007

No. 267569

Wayne Circuit Court

LC No. 05-009815-01

Before: Zahra, P.J. and Bandstra and Owens, JJ.

PER CURIAM.

Defendant Robert Hall appeals his bench trial conviction for attempted possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), MCL 750.92. He was sentenced to 12 months in the Wayne County Jail and 24 months' probation. We affirm.

Defendant argues that there was insufficient evidence to establish beyond a reasonable doubt his guilt of attempted possession with intent to deliver controlled substances. We review challenges to the sufficiency of the evidence in bench trials de novo, viewing the evidence in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 733; 705 NW2d 728 (2005).

Circumstantial evidence and the reasonable inferences that arise from it can constitute sufficient proof of the elements of the crime. *People v Williams*, 268 Mich App 416, 421; 707 NW2d 624 (2005). The elements of an attempt are: "(1) an intent to do an act or to bring about certain consequences which would in law amount to a crime; and (2) an act in furtherance of that intent which, as it is most commonly put, goes beyond mere preparation." *People v Jones*, 443 Mich 88, 100; 504 NW2d 158 (1993). The elements of possession with intent to deliver less than fifty grams of a controlled substance are: (1) the recovered substance is the controlled substance it purports to be, (2) the amount of controlled substance possessed by defendant weighs less than fifty grams, (3) the defendant did not have valid authorization to possess the substance, and (4) the defendant knowingly possessed the substance with the intent to deliver. *People v Gonzalez*, 256 Mich App 212, 225-226; 663 NW2d 499 (2003).

The prosecution presented the testimony of three police officers at trial. Officer Magdalena McKinney observed defendant receive currency from two women, and, in return, provide the women with a substance that defendant retrieved from his waistband. Officer David

Meadows observed defendant attempt to flee from the police when they arrived to apprehend him. Officer Meadows found defendant to be in possession of \$32 at the time of his apprehension. Officer Michael Carson searched defendant shortly after his apprehension, and found defendant to be in possession of an amber vial containing eight Ziploc bags, each containing a substance verified to be cocaine. Officer Carson found the vial containing cocaine in the waistband of defendant's trousers. We find this evidence to be sufficient to support defendant's conviction.

The evidence showed that, on at least two occasions, defendant delivered items contained in the vial stored in the waistband of his trousers in exchange for currency. The amber vial was found to contain cocaine. In addition, defendant possessed the cocaine in eight separate Ziploc bags kept in the amber vial. A reasonable inference can be made that defendant had the intent to deliver cocaine, and acted in furtherance of his intent, when he hung out in an area known for drug trafficking, possessed cocaine packaged in a manner for individual resale, and was observed providing contents from the area of his wristband, where the vial containing cocaine was later found, after receiving cash. The intent to deliver may be inferred from "the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Defendant's intent may also be inferred from the facts and circumstances, and because of the difficulty of proving a state of mind, minimal circumstantial evidence is sufficient to find intent. *Gonzalez, supra* at 226; *People v Fetterley*, 229 Mich App 511; 583 NW2d 199 (1998). Furthermore, the trial court was allowed to take defendant's attempt to flee the police into account, as evidence of defendant's guilty conscious. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Therefore, there was sufficient evidence for the trial court to find that defendant attempted to possess with the intent to deliver less than 50 grams of cocaine.

In reaching our conclusion, we note defendant's claim that, because the police did not apprehend and search the people who allegedly purchased cocaine from defendant, there was insufficient evidence offered to prove that he intended to deliver cocaine. The prosecutor was not, however, required to show that defendant engaged in a successful sale of the cocaine he possessed. Rather, he had to prove that defendant attempted to possess with the intent to deliver less than 50 grams of cocaine. To do so, the prosecutor was only required to show that defendant intended to sell the cocaine and committed an act in furtherance of that intent. MCL 750.92.

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens